

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re:)	Chapter 11
)	
W.R. GRACE & CO., et al.)	Case No.: 01-01139 (JKF)
)	(Jointly Administered)
Debtors)	

**RESPONSE OF KELLEY & FERRARO LLP AND THE FERRARO
LAW FIRM TO DEBTORS' NOTICE OF FAILURE
TO REACH AGREEMENT ON PROTOCOL CONCERNING
PRODUCTION OF CHEST X-RAYS OF CLAIMANTS
WITH MALIGNANCIES OTHER THAN MESOTHELIOMA**

On November 17, 2006, W.R. Grace ("Grace") notified the Court that "it has been unable to reach agreement with Claimants' counsel and the PI Committee regarding a protocol for claimants alleging an asbestos-related cancer other than mesothelioma... to submit original chest x-rays upon which their claims are based to a centralized repository maintained by the Court's claims agent, Rust Consulting ("Rust")." As a result, Grace submitted a Proposed Order asking the Court to order the following protocol:

- 1) Claimants be required to send their original chest x-rays to Rust by January 12, 2007, unless the x-rays were in the possession of Claimants' Treating physician in which case copies would be acceptable; and
- 2) Rust be required to establish and maintain a repository for the x-rays so that they could be reviewed by three or more B-readers until April 12, 2007 by which time the x-rays would be returned to the Claimants.

Claimants represented by Kelley & Ferraro LLP and Ferraro & Associates, PA ("K&F/Ferraro Claimants") are opposed to Grace's Proposed Order.

The Federal Rules of Civil Procedure do not require the K&F/Ferraro Claimants to relinquish possession of its original chest x-ray. By doing so, K&F/Ferraro Claimants would be precluded from moving forward in their currently pending state causes of action. Moreover, copies of the K&F/Ferraro Claimants chest x-rays, would allow Grace to perform an adequate assessment of the claims of the K&F/Ferraro Claimants. See Grace's Proposed Order in which Grace states that *copies* of x-rays in the possession of the Claimant's treating physician are acceptable. If Grace determines that it wants to examine the original chest x-rays of some or all K&F/Ferraro Claimants, it may perform the examination at a reasonable time at the offices of Kelley & Ferraro LLP and/or Ferraro & Associates, PA (which is the current locations of the original chest x-rays). See *Weaver v. Evans*, 1997 WL 833168 (D. Kan. 1997) (holding that defendant was not entitled to the removal of x-rays from their current location due to the risk of damage or loss and holding that copies of the x-rays as well as the right to inspect the x-rays at their current location were sufficient for purposes of discovery).

For the reasons set forth above, K&F/Ferraro Claimants request that the Court deny the W.R. Grace Proposed Order for a protocol for the production of the chest x-rays of asbestos claimants.

Respectfully submitted,

KELLEY & FERRARO LLP

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